

ESTTA Tracking number: **ESTTA278734**

Filing date: **04/17/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following parties oppose registration of the indicated application.

Opposers Information

Name	Polyphonic Human Media Interface, S.L.		
Entity	Limited Partnership	Citizenship	Spain
Address	Calle Artesans, 10 # Parc Tecnologic del Valles Cerdanyola, E-08290 SPAIN		

Name	Music Intelligence Solutions, Inc.		
Entity	Corporation	Citizenship	Delaware
Address	208 E. Broughton St. Savannah, GA 31401 UNITED STATES		

Attorney information	Joseph L. Morales Whiteford, Taylor & Preston L.L.P. Seven Saint Paul Street Baltimore, MD 21202 UNITED STATES jmorales@wtplaw.com, trademark@wtplaw.com, stiller@wtplaw.com Phone:(410) 347-8700		
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Applicant Information

Application No	78963748	Publication date	03/31/2009
Opposition Filing Date	04/17/2009	Opposition Period Ends	04/30/2009
Applicant	PLATINUM BLUE MUSIC INTELLIGENCE INC. 4200 NORTH RIVER WAY SACRAMENTO, CA 95864 UNITED STATES		

Goods/Services Affected by Opposition

Class 009.

All goods and services in the class are opposed, namely: Computer software for enabling applicant's clients to review and analyze digitally-processed music files

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)

Marks Cited by Opposer as Basis for Opposition

U.S. Application	79047533	Application Date	07/05/2007
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No.			
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MUSIC INTELLIGENCE SOLUTIONS		
Design Mark	Music Intelligence Solutions		
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: Computer programs (recorded musical software), computer memories</p> <p>Class 035. First use: Compilation of information in a central computer, compilation of data in a computer</p> <p>Class 042. First use: Computer programming, computer consulting, computer software rental, computer systems analysis, design of computer systems, computer software installation, hosting computer web sites</p>		

U.S. Application No.	79051589	Application Date	02/26/2008
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MUSINTELLIGENCE		
Design Mark	Musintelligence		
Description of Mark	NONE		
Goods/Services	<p>Class 009. First use: Computer programs for analyzing characteristics in musical compositions</p> <p>Class 035. First use: Services consisting of the compilation of data in computer data banks or databases</p> <p>Class 042. First use: Computer programming; consulting services in the field of design, selection, implementation and use of computer hardware and software systems for others; rental of software for computers; design and development of on-line software systems; computer system design, installation of computer software; design of web sites for others</p>		

U.S. Application No.	79035709	Application Date	01/18/2007
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	MUSIC INTELLIGENCE UNIVERSE		
Design Mark	Music Intelligence Universe		

Description of Mark	NONE
Goods/Services	<p>Class 009. First use: Computer programs for analyzing characteristics in musical compositions</p> <p>Class 035. First use: Services consisting of the compilation of data in computer data banks or databases</p> <p>Class 042. First use: Computer programming; consulting services in the field of design, selection, implementation and use of computer hardware and software systems for others; rental of software for computers; design and development of on-line computer software systems; computer system design; installation of computer software; design of websites for others</p>

Attachments	<p>79047533#TMSN.jpeg (1 page)(bytes)</p> <p>79051589#TMSN.jpeg (1 page)(bytes)</p> <p>79035709#TMSN.jpeg (1 page)(bytes)</p> <p>MIS Filed Notice of Opposition MUSIC INTELLIGENCE.PDF (27 pages)(270515 bytes)</p>
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Joseph L. Morales/
Name	Joseph L. Morales
Date	04/17/2009

**IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Polyphonic Human Media Interface, S.L.
Calle Artesans, 10 – Parc Tecnologic del Valles
E-08290 Cerdanyola (Barcelona)
Spain

And

Music Intelligence Solucions, Inc.
208 E. Broughton St.
Savannah, Georgia 31401

Opposers

v.

Platinum Blue Music Intelligence, Inc.
4200 North River Way
Sacramento, California 95864

Applicant

Trademark Trial and Appeal Board
Commissioner for Trademarks
Trademark Assistance Center
James Madison Building East Wing,
Concourse Level
600 Dulany Street
Alexandria, Virginia 22314

* IN THE MATTER OF
* TRADEMARK APPLICATION
* SERIAL NO. 78/963,748

*
*
* PUBLISHED IN
* THE OFFICIAL GAZETTE
*
* ON March 31, 2009
*

* Opposition No.: _____

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NOTICE OF OPPOSITION

Opposers, Polyphonic Human Media Interface, S.L. (“PHMI”) and Music Intelligence Solucions, Inc. (“MIS”), by their undersigned counsel and pursuant to 15

U.S.C. § 1063 and 37 C.F.R. §§ 2.101 and 2.104, file this Notice of Opposition to the Trademark Application filed by Platinum Blue Music Intelligence, Inc. (“Applicant”), Serial No. 78/963,748, published in the Official Gazette on March 31, 2009. Opposers believe that they will be immediately, irreparably, and substantially damaged by registration of the mark at issue.

The Trademark Application

1. On or about September 6, 2006, the Applicant filed an application with the United States Patent and Trademark Office (PTO) for registration of MUSIC INTELLIGENCE (“Applicant’s Mark”) in connection with “computer software for enabling applicant’s clients to review and analyze digitally-processed music files.” See TARR Status Report, a copy of which is attached hereto as **Exhibit A**. Applicant’s application was initially filed as a Section 1(a) application based upon alleged use of the Mark in commerce. See *Trademark/Service Mark Application, Principal Register*, attached hereto as **Exhibit B**. The filing basis was later changed to an Intent to Use application under Section 1(b). See *Request for Reconsideration after Final Action*, attached hereto as **Exhibit C**.

2. The Applicant’s Mark was published for opposition on March 31, 2009. See **Exhibit A**.

Opposers’ Prior and Continuous Use

3. Opposer PHMI is a limited partnership organized under the laws of Spain in 2002. PHMI has developed, among other products, software for music analysis software. The company was awarded United States Patent Number 7,081,579 on July

25, 2006, which was originally filed on October 3, 2002. Thus, since at least October 3, 2002, PHMI has been in possession of the technology associated with its music analysis software.

4. On December 12, 2005, PHMI filed a community trademark (CTM) application with the Office of Harmonization in the Internal Market (OHIM) for trademark protection in the European Union for the MUSIC INTELLIGENCE trademark. The CTM was filed on December 28, 2005, was registered on October 30, 2007, and is currently in-force. In addition to the MUSIC INTELLIGENCE trademark, PHMI has also filed and uses a number of related marks for its software. A CTM for MUSIC INTELLIGENCE SOLUTIONS [and design] was registered on September 30, 2008.

5. In the United States there are currently three pending applications for MUSIC INTELLIGENCE related marks, which PHMI filed under the Madrid Protocol. MUSIC INTELLIGENCE SOLUTIONS, application serial number 79/047533, was filed on July 5, 2007; the corresponding CTM application was originally filed on December 28, 2005, and was registered on October 23, 2007. MUSINTELLIGENCE, application serial number 79/051589, was filed on February 26, 2008; the corresponding CTM application was originally filed on December 29, 2006; and was registered on October 30, 2007. MUSIC INTELLIGENCE UNIVERSE, application serial number 79/035709, was filed on January 18, 2007; the corresponding CTM was filed on February 22, 2006, and was registered on June 28, 2007. The prosecution of the PHMI applications for MUSIC INTELLIGENCE SOLUTIONS, MUSINTELLIGENCE, and MUSIC

INTELLIGENCE UNIVERSE, has been suspended pending the outcome of the prosecution of Applicant's applications for MUSIC INTELLIGENCE.

6. Opposer MIS is a wholly owned subsidiary of PHMI organized under the laws of Delaware. MIS was incorporated on October 14, 2005. MIS owns and/or is authorized to use the above referenced marks and patent of PHMI in the United States and has been using the PHMI marks continuously since the date of incorporation of the company in association with the goods and services it provides.

Likelihood of Confusion

7. In pertinent part, 15 U.S.C. § 1052 provides:

No trademark by which the goods of the applicant may be distinguished from the goods of others shall be refused registration on the principal register on account of its nature unless it –

* * *

(d) Consists of or comprises a mark which so resembles a mark registered in the Patent and Trademark Office, or a mark or trade name previously used in the United States by another and not abandoned, as to be likely, when used on or in connection with the goods of the applicant, to cause confusion, or to cause mistake, or to deceive

15 U.S.C. § 1052.

8. In the instant matter, the Opposers' use of the Opposers' Marks in interstate commerce is senior and has been continuous.

9. The Applicant's Mark is identical to at least one of Opposers' Marks and confusingly similar to other Opposers' Marks. Specifically, Applicant's MUSIC INTELLIGENCE mark is identical to Opposers' MUSIC INTELLIGENCE mark, which is used in association with music analysis software and other related services. In

addition, Applicant's MUSIC INTELLIGENCE mark is also confusingly similar to Opposers' MUSIC INTELLIGENCE SOLUTIONS, MUSIC INTELLIGENCE UNIVERSE, and MUSINTELLIGENCE marks, which are also used in association with music analysis software and related services.

10. Applicant's use of Applicant's Mark in connection with computer software for enabling applicant's clients to review and analyze digitally-processed music files is likely to cause confusion, mistake and deception of customers and potential customers of Opposers, as well as the public in general.

11. Given the confusing similarity of the Applicant's Mark to the Opposers' Marks, and the Opposers' long-standing and continuous use of the MUSIC INTELLIGENCE mark, Applicant's use of the Applicant's Mark is likely to cause confusion with the Opposers' marks. Registration of the Applicant's Mark will only further this likelihood of confusion and deceive the public into believing that the goods offered by the Applicant are actually offered, developed, and/or endorsed by the Opposers.

12. Registration of the Applicant's Mark will diminish and dilute the Opposers' Marks resulting in immediate, irreparable and substantial injury to Opposers.

Fraud

13. In Pertinent part, 15 U.S.C. §1051(b) provides that the applicant must specify:

(D) that, to the best of the verifier's knowledge and belief, no other person has the right to use such mark in commerce either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive.

15 U.S.C. §1051(b) (1) (D).

14. Michael J. McCready, Applicant's Chief Executive Officer, was an employee of PHMI until shortly before the incorporation of the Applicant and shortly before Applicant's preparation and filing of Applicant's trademark application.

15. Mr. McCready was well aware of the Opposers' use of the Mark in the European Union and in the United States while employed by PHMI.

16. Mr. McCready was aware of the incorporation of Opposer MIS on October 14, 2005 while employed by PHMI.

17. Because Applicant was fully aware of the existence and use of Opposers' Marks in commerce in the United States, Applicant's declaration signed by its agent stating that to the best of the verifier's knowledge and belief, no other person had the right to use such mark in commerce was made with the intent to deceive the PTO. Thus, Applicant's request for registration should be denied.

WHEREFORE, the Opposers, Polyphonic Human Media Interface, S.L., and Music Intelligence Solutions, Inc., respectfully request denial of the Applicant's request for registration of Applicant's Mark.

Respectfully submitted,

 /Joseph L. Morales/
Steven E. Tiller
Dana O. Lynch
Joseph L. Morales
Whiteford, Taylor & Preston L.L.P.
Seven Saint Paul Street
Baltimore, Maryland 21202
(410) 347-8700

*Attorneys for Opposers
Polyphonic Human Media Interface, S.L.
and Music Intelligence Solutions, Inc.*

Exhibit A

Thank you for your request. Here are the latest results from the [TARR web server](#).

This page was generated by the TARR system on 2009-04-17 10:13:30 ET

Serial Number: 78963748 [Assignment Information](#) [Trademark Document Retrieval](#)

Registration Number: (NOT AVAILABLE)

Mark

MUSIC INTELLIGENCE

(words only): MUSIC INTELLIGENCE

Standard Character claim: Yes

Current Status: Application has been published for opposition.

Date of Status: 2009-03-31

Filing Date: 2006-08-30

Filed as TEAS Plus Application: Yes

Currently TEAS Plus Application: Yes

The Information will be/was published in the Official Gazette on 2009-03-31

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 116

Attorney Assigned:
LEE DEBRA ANN

Current Location: 650 -Publication And Issue Section

Date In Location: 2009-02-24

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. PLATINUM BLUE MUSIC INTELLIGENCE INC.

Address:

PLATINUM BLUE MUSIC INTELLIGENCE INC.
4200 NORTH RIVER WAY
SACRAMENTO, CA 95864
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 009

Class Status: Active

Computer software for enabling applicant's clients to review and analyze digitally-processed music files

Basis: 1(b)

First Use Date: (DATE NOT AVAILABLE)

First Use in Commerce Date: (DATE NOT AVAILABLE)

ADDITIONAL INFORMATION

Disclaimer: "MUSIC"

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-03-31 - Published for opposition

2009-03-11 - Notice of publication

2009-02-24 - Law Office Publication Review Completed

2009-02-23 - Approved for Pub - Principal Register (Initial exam)

2009-01-31 - Teas/Email Correspondence Entered

2009-01-30 - Communication received from applicant

2009-01-30 - TEAS Response to Office Action Received

2008-07-30 - Notification Of Non-Final Action E-Mailed

2008-07-30 - NON-FINAL ACTION E-MAILED

2008-07-30 - Non-Final Action Written

2008-04-29 - TEAS Change Of Correspondence Received

2008-03-05 - Teas/Email Correspondence Entered

2008-03-05 - Communication received from applicant

2008-03-05 - Assigned To LIE

2008-01-31 - TEAS Request For Reconsideration Received

2007-07-31 - Notification Of Final Refusal Emailed

2007-07-31 - Final refusal e-mailed

2007-07-31 - Final Refusal Written

2007-07-11 - Automatic Update Of Assignment Of Ownership

2007-07-06 - Teas/Email Correspondence Entered

2007-07-05 - Communication received from applicant

2007-07-05 - TEAS Response to Office Action Received

2007-01-24 - Non-final action e-mailed

2007-01-24 - Non-Final Action Written

2007-01-24 - Assigned To Examiner

2006-09-06 - New Application Entered In Tram

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Eric Ferraro

Correspondent

ERIC FERRARO
BULLIVANT HOUSER BAILEY PC
601 CALIFORNIA STREET
SUITE 1800
SAN FRANCISCO, CA 94108
Phone Number: 415-352-2700
Fax Number: 415-352-2701

Exhibit B

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 78963748

Filing Date: 08/30/2006

NOTE: Data fields with the * are mandatory under TEAS Plus. The wording "(if applicable)" appears where the field is only mandatory under the facts of the particular application.

The table below presents the data as entered.

Input Field	Entered
TEAS Plus	YES
MARK INFORMATION	
*MARK	<u>MUSIC INTELLIGENCE</u>
*STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	MUSIC INTELLIGENCE
*MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
APPLICANT INFORMATION	
*OWNER OF MARK	Reed, Tracie
*STREET	4200 North River Way
*CITY	Sacramento
*STATE (Required for U.S. applicants)	California
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	95864
PHONE	916-548-2340
EMAIL ADDRESS	reedtracie@comcast.net

AUTHORIZED TO COMMUNICATE VIA EMAIL	No
LEGAL ENTITY INFORMATION	
*TYPE	INDIVIDUAL
* COUNTRY OF CITIZENSHIP	United States
GOODS AND/OR SERVICES AND BASIS INFORMATION	
*INTERNATIONAL CLASS	009
*DESCRIPTION	Computer software for processing digital music files
*FILING BASIS	SECTION 1(a)
*FIRST USE ANYWHERE DATE	At least as early as 12/10/2005
*FIRST USE IN COMMERCE DATE	At least as early as 12/10/2005
*SPECIMEN FILE NAME	\\TICRS\EXPORT3\IMAGEOUT3\789\637\78963748\xml1\FT K0003.JPG
SPECIMEN DESCRIPTION	Music analysis, recommendation and prediction services utilizing a proprietary computer software application that recognizes the mathematical patterns in recorded music and is used for predicting commercial success of hit songs, radio station programing, advertising optimization and music search, recommendation and discovery.
ADDITIONAL STATEMENTS INFORMATION	
*TRANSLATION (if applicable)	
*TRANSLITERATION (if applicable)	
*CLAIMED PRIOR REGISTRATION (if applicable)	
*CONSENT (NAME/LIKENESS) (if applicable)	
*CONCURRENT USE CLAIM (if applicable)	
ATTORNEY INFORMATION	
NAME	Eric Ferraro
ATTORNEY DOCKET NUMBER	Platinum Blue
FIRM NAME	Jacobs & Ferraro, LLP

STREET	One Embarcadero Center, Suite 1200
CITY	San Francisco
STATE	California
COUNTRY	United States
ZIP/POSTAL CODE	94111
PHONE	415-732-3787
FAX	415-732-3786
EMAIL ADDRESS	eferraro@jacobsferraro.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
CORRESPONDENCE INFORMATION	
*NAME	Eric Ferraro
FIRM NAME	Jacobs & Ferraro, LLP
*STREET	One Embarcadero Center, Suite 1200
* CITY	San Francisco
* STATE (Required for U.S. applicants)	California
* COUNTRY	United States
* ZIP/POSTAL CODE (Required for U.S. applicants only)	94111
PHONE	415-732-3787
FAX	415-732-3786
* EMAIL ADDRESS	eferraro@jacobsferraro.com
* AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	275
TOTAL FEE DUE	275
SIGNATURE INFORMATION	
* SIGNATURE	/ekf/

* SIGNATORY NAME	Eric Ferraro
SIGNATORY POSITION	Partner
* SIGNATURE DATE	08/30/2006
FILING INFORMATION SECTION	
SUBMIT DATE	Wed Aug 30 14:00:02 EDT 2006
TEAS STAMP	USPTO/FTK-71.140.61.206-2 0060830140002951060-78963 748-332d29b8923bfdc9bab12 3e98af724e1e-CC-1715-2006 0830132854145252

Trademark/Service Mark Application, Principal Register

TEAS Plus Application

Serial Number: 78963748

Filing Date: 08/30/2006

To the Commissioner for Trademarks:

MARK: MUSIC INTELLIGENCE (Standard Characters, see [mark](#))

The literal element of the mark consists of MUSIC INTELLIGENCE. The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Tracie Reed, a citizen of United States, residing at 4200 North River Way, Sacramento, California, United States, 95864, requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 009: Computer software for processing digital music files

If the applicant is filing under Section 1(b), intent to use, the applicant declares that it has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(b), as amended.

If the applicant is filing under Section 1(a), actual use in commerce, the applicant declares that it is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended.

If the applicant is filing under Section 44(d), priority based on foreign application, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and asserts a claim of priority based on a specified foreign application(s). 15 U.S.C. Section 1126(d), as amended.

If the applicant is filing under Section 44(e), foreign registration, the applicant declares that it has a bona fide intention to use the mark in commerce on or in connection with the identified goods and/or services, and submits a copy of the supporting foreign registration(s), and translation thereof, if appropriate. 15 U.S.C. Section 1126(e), as amended.

The applicant hereby appoints Eric Ferraro of Jacobs & Ferraro, LLP, One Embarcadero Center, Suite 1200, San Francisco, California, United States, 94111 to submit this application on behalf of the applicant. The attorney docket/reference number is Platinum Blue.

The USPTO is authorized to communicate with the applicant or its representative at the following email address: eferraro@jacobsferraro.com.

A fee payment in the amount of \$275 will be submitted with the application, representing payment for 1 class(es).

Declaration

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements, and the like, may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. Section 1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his/her own knowledge are true; and that all statements made on information and belief are believed to be true.

Signature: /ekf/ Date: 08/30/2006

Signatory's Name: Eric Ferraro

Signatory's Position: Partner

Mailing Address:

Eric Ferraro

One Embarcadero Center, Suite 1200

San Francisco, California 94111

RAM Sale Number: 1715

RAM Accounting Date: 08/30/2006

Serial Number: 78963748

Internet Transmission Date: Wed Aug 30 14:00:02 EDT 2006

TEAS Stamp: USPTO/FTK-71.140.61.206-2006083014000295

1060-78963748-332d29b8923bfdc9bab123e98a

f724e1e-CC-1715-20060830132854145252

MUSIC INTELLIGENCE



Latest News

July 10, 2006
Platinum Blue Music Intelligence
nominated for World Technology
Award.



The Economist
June 8 2006
Music Intelligence systems that
can determine the difference
between hits and misses.

[more](#)

BCC 1 Evening News Broadcast
June 2006
Making hit music into a science.

[more](#)



What People Are Saying...

[Moby](#)
Time Magazine Cover Story - October
24, 2005
I know a guy in Barcelona... [more](#)

[Ric Wake](#)

Welcome to Platinum Blue

Platinum Blue Music Intelligence uses a technology called Music X-Ray to analyze the underlying mathematical patterns in music. This process can be compared to the original x-ray when it was first introduced to medicine. The x-ray shows the doctor something that is already there but that could not be seen. The doctor then uses that information to make better decisions. Our Music X-Ray technology works in much the same way in that it shows music industry professionals their music and their market in ways they could not see it before.

Our flagship service accurately predicts the success of hit songs and is thus used on the supply side of the music industry as a crystal ball. It helps the companies that make and sell music predict which songs are going to become hits due to the discovery that hit songs conform to a limited number of mathematical patterns that cannot be heard with the ear.

Most singles released by music labels sound and feel like hits but lack these optimal mathematical patterns and this is a main reason why the industry has less than a 20% success rate. Less than one in 5 songs that are released as singles and promoted with a significant budget actually reach the charts. By using our technology hit rates can be increased to over 80%, four times the accuracy rate the industry currently has, effectively providing a risk management capability that helps yield massive improvements in return on investment.

Our technology does not influence creativity or artistic integrity rather it simply helps the industry place more intelligent investment behind songs with a better chance of market success. As a tool it can be used to find the next mainstream pop hit. It can also be used to help labels feel more confident when promoting "risky" or innovative sounding music by showing them that there is a market for it and how to reach that market. Additionally, the technology can be used by music producers to help push the envelope of creativity.

On the demand side of the industry it does the equivalent of finding a needle in a haystack. With over 10 million songs legally available to everyone at the click of a button, it identifies the music a person is most likely to enjoy (music search, recommendation and discovery). This is the next wave of the digital revolution – filtering through the vast number of choices to find the content that you're most likely to enjoy.

Exhibit C

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	78963748
LAW OFFICE ASSIGNED	LAW OFFICE 116
MARK SECTION (no change)	
ARGUMENT(S)	
Applicant may amend an application to clarify the identification of its goods or services. 37 C.F.R. §2.71(a); TMEP §1402.06. Applicant wishes to supply a more accurate description of its goods and amends the identification in the field below to more clearly describe its software.	
GOODS AND/OR SERVICES SECTION (current)	
INTERNATIONAL CLASS	009
DESCRIPTION	
Downloadable computer software for enabling applicant's clients to review and manipulate digitally-processed music files	
FILING BASIS	Section 1(a)
FIRST USE ANYWHERE DATE	At least as early as 12/10/2005
FIRST USE IN COMMERCE DATE	At least as early as 12/10/2005
GOODS AND/OR SERVICES SECTION (proposed)	
INTERNATIONAL CLASS	009
DESCRIPTION	
Software application for enabling applicant's clients to upload digitally-processed music files; software that reviews and analyzes digitally-processed music files.	
FILING BASIS	Section 1(b)
ADDITIONAL STATEMENTS SECTION	
DISCLAIMER	"No claim is made to the exclusive right to use "Music" apart from the mark as shown."
SIGNATURE SECTION	

DECLARATION SIGNATURE	/Eric Ferraro/
SIGNATORY'S NAME	Eric Ferraro
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	01/31/2008
RESPONSE SIGNATURE	/Eric Ferraro/
SIGNATORY'S NAME	Eric Ferraro
SIGNATORY'S POSITION	Attorney of record
DATE SIGNED	01/31/2008
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	NO
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Jan 31 17:45:09 EST 2008
TEAS STAMP	USPTO/RFR-71.140.61.206-2 0080131174509082451-78963 748-410119972a6914e1d7dfd 6b8b67d8872b-N/A-N/A-2008 0131172348546253

Request for Reconsideration after Final Action To the Commissioner for Trademarks:

Application serial no. **78963748** has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

Applicant may amend an application to clarify the identification of its goods or services. 37 C.F.R. §2.71(a); TMEP §1402.06. Applicant wishes to supply a more accurate description of its goods and amends the identification in the field below to more clearly describe its software.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 009 for Downloadable computer software for enabling applicant's clients to review and manipulate digitally-processed music files

Original Filing Basis:

Filing Basis: Section 1(a), Use in Commerce: The applicant is using the mark in commerce, or the applicant's related company or licensee is using the mark in commerce, on or in connection with the identified goods and/or services. 15 U.S.C. Section 1051(a), as amended. The mark was first used at least as early as 12/10/2005 and first used in commerce at least as early as 12/10/2005, and is now in use in such commerce.

Proposed: Class 009 for Software application for enabling applicant's clients to upload digitally-processed music files; software that reviews and analyzes digitally-processed music files.

Deleted Filing Basis: 1(a)

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

ADDITIONAL STATEMENTS

Disclaimer

"No claim is made to the exclusive right to use "Music" apart from the mark as shown."

SIGNATURE(S)

Declaration Signature

If the applicant is seeking registration under Section 1(b) and/or Section 44 of the Trademark Act, the applicant had a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. 37 C.F.R. Secs. 2.34(a)(2)(i); 2.34 (a)(3)(i); and 2.34(a)(4)(ii). If the applicant is seeking registration under Section 1(a) of the Trademark Act, the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date. 37 C.F.R. Secs. 2.34(a)(1)(i). The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declares that he/she is properly authorized to execute this application on behalf of the applicant; he/she believes the applicant to be the owner of the trademark/service mark sought to be registered, or, if the application is being filed under 15 U.S.C. §1051(b), he/she believes applicant to be entitled to use such mark in commerce; to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive; that if the original application was submitted unsigned, that all statements in the original application and this submission made of the declaration signer's knowledge are true; and all statements in the original application and this submission made on information and belief are believed to be true.

Signature: /Eric Ferraro/ Date: 01/31/2008

Signatory's Name: Eric Ferraro

Signatory's Position: Attorney of record

Request for Reconsideration Signature

Signature: /Eric Ferraro/ Date: 01/31/2008

Signatory's Name: Eric Ferraro

Signatory's Position: Attorney of record

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is not filing a Notice of Appeal in conjunction with this Request for Reconsideration.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17 day of April, 2009, a copy of the foregoing
Notice of Opposition was mailed first-class, postage prepaid, to:

Eric K. Ferraro, Esq.
Bullivant Houser Bailey
601 California Street, Suite 1800
San Francisco, California 94108-2823

Applicant's Representative

/Joseph L. Morales/
Joseph L. Morales